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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 6721
5 Todd Long)
6 Todd Long for Congress and)
7 Todd Long in his official capacity as treasurer)
8)
9)

10 **SECOND GENERAL COUNSEL'S REPORT**

11
12 **I. ACTIONS RECOMMENDED**

13 We recommend that the Commission: (1) find reason to believe that Todd Long, Todd
14 Long for Congress and Todd Long in his official capacity as treasurer violated 52 U.S.C.
15 § 30104(b); (2) find reason to believe that Todd Long for Congress and Todd Long in his
16 capacity as treasurer violated 52 U.S.C. §§ 30120(a)(1)-(3); (3) approve the attached factual and
17 legal analysis; (4) approve compulsory process, as necessary; and (5) approve the appropriate
18 letters.

19 **II. INTRODUCTION**

20 The Commission previously found reason to believe that Beth Steele and an
21 unincorporated entity known as Women Advocating Respect ("WAR") violated 52 U.S.C.
22 §§ 30104(c) and 30104(g) and 11 C.F.R. § 109.10(d) by failing to file independent expenditure
23 reports in connection with automated telephone calls or "robocalls" expressly advocating the
24 defeat of Representative Alan Grayson, a candidate in 2012 for the Ninth Congressional District
25 of Florida, and authorized an investigation to discern the amount of the expenditure at issue.¹
26 Certification ¶¶ 2.a-2.b, MUR 6721 (Steele/WAR) (Dec. 3, 2013).

¹ Todd Long was Grayson's opponent in the 2012 election. The Complaint alleged that WAR is merely the alter ego of Steele, who it characterizes as Todd Long's girlfriend. Comp. at 2. Steele did not contest the truth of the allegations. Steele Resp. at 1.

1 During the investigation, Steele asserted that her payments for the robocalls were not
2 independent expenditures because they were coordinated with Grayson's opponent, Todd Long
3 and his principal campaign committee, Todd Long for Congress (the "Committee").² As a result
4 of the Commission's consideration of that information, Todd Long and the Committee were
5 named as respondents and notified of their potential violations in this matter. Long and the
6 Committee submitted a brief response denying the allegations. As discussed below, we
7 recommend that the Commission find reason to believe that Long and the Committee violated
8 the Act by accepting and failing to report excessive contributions from Steele and by not
9 including the required disclaimers in the calls made on its behalf.

10 II. FACTUAL BACKGROUND

11 In the 2012 elections, Todd Long was the Republican nominee running against the
12 Democratic Party nominee, Rep. Alan Grayson, to represent the Ninth Congressional District of
13 Florida. Compl. at 2. The Complaint alleges that on or about October 25, 2012, robocalls
14 featuring Steele's voice were made to voters in Florida's Ninth Congressional district. The
15 recording stated:

16 Hi, I'm Beth with Women Advocating Respect. On behalf of the women
17 of Central Florida, I want you to know this about multi-millionaire
18 congressional candidate Alan Grayson. This is the same Alan Grayson
19 who called Dan Webster 'Taliban Dan' simply for being a Christian. His
20 TV and radio ads against Todd Long are absolutely false. His distortions
21 to attempt to scare our Seniors are despicable. This is the same Alan
22 Grayson already thrown out of Congress once for his repeated lies and
23 outrageous comments.

² Todd Long is the Committee's treasurer. See Todd Long for Congress Misc. Report to FEC at 1 (May 20, 2013). It appears that Long was attempting to file a termination report and wrote his own name in the space for the Committee's name. Accordingly, the Commission's database now lists the Committee's name as Long, Todd William, and its filings may be found under that name. For ease of reference, we will continue to refer to the Committee as Todd Long for Congress.

1 Now he is being sued for millions of dollars for taxpayer fraud. On
2 November 6, send Alan Grayson home for good. Paid for by Women
3 Advocating Respect.

4 Compl. at 1-2.

5 The Complaint alleges that Women Advocating Respect, which is not registered with the
6 state of Florida or the Commission, is merely the alter ego of Steele, who it characterizes as
7 Todd Long's girlfriend. *Id.* The Complaint further alleges that Steele or WAR's payments for
8 the robocalls constitute independent expenditures that should have been reported pursuant to
9 52 U.S.C. § 30104(c)(1) and 11 C.F.R. § 109.10. Because these expenditures, allegedly for more
10 than \$1000, were made within 20 days of an election, the Complaint also alleges that Steele or
11 WAR should have reported the independent expenditure within 24 hours as required by 52
12 U.S.C. § 30104(g)(1)(A) and 11 C.F.R. § 109.10(d). Steele's response did not address or contest
13 any of the relevant contentions in the Complaint, but asked that the Commission dismiss the
14 matter because she lacked familiarity with the relevant disclosure requirements and did not
15 intend to engage in political campaign activity in the future.³

16 Following the Commission's finding of reason to believe, we obtained documents from
17 and interviewed Steele concerning the cost of the robocalls. Counsel for Steele asserted that
18 Steele "did a favor for a friend who was a candidate" against Grayson and that Steele, not WAR,
19 made \$700 in expenditures to produce the robocalls.⁴ Further, he stated that she only made the
20 expenditures because Long told her to do so.⁵

³ Steele Resp. at 1.

⁴ Steele produced four documents: (1) a temporary check for \$250 issued to Luz Rivera with "Women Advocating Respect" handwritten at the top and dated October 3, 2012; (2) a temporary check for \$100 issued to Christina Colon with "Women Advocating Respect" handwritten at the top and also dated October 3, 2012; (3) a \$350 invoice issued to Women Advocating Respect dated October 16, 2012 from a company called Brave Designs; and (4) a check from "Women Advocating Respect" for \$350 issued to Jeremy Chambers and dated November 6, 2012. McDonough explained that the check to Chambers (owner of Brave Designs) was for recording the call and

1 During her interview, Steele represented that she never incorporated WAR and that the
2 bank account she used to make her payments for the robocalls was open for only two months.
3 She explained that it was Long's idea to make the robocalls, that he asked her to do them but she
4 did not know why, and that she participated in producing the robocalls simply as a favor to Long.
5 Steele represented that she and Long are no longer friends. Steele also confirmed her attorney's
6 representation that her payments for the calls were not related to other in-kind contributions from
7 her to Long's campaign, which the Committee had disclosed in its reports to the Commission.
8 She stated that she was not reimbursed for the costs of the robocalls and that she spent only \$700
9 in connection with them.

10 According to Steele, Long asked her to write two checks to cover the cost of translating
11 the robocalls into Spanish, provided the names of the two payees, and told her what amounts to
12 pay. She did not speak with either of the women to whom she wrote checks for the Spanish
13 version of the robocall, but understood that one translated the text of the robocalls into Spanish,
14 while the other provided voice narration for the Spanish-language version.⁶ Steele further
15 asserted that Long provided the script for the robocalls.

16 Steele asserts that Jeremy Chambers of Brave Designs came to her office with his
17 equipment to record the calls. On January 30, 2014, we conducted a telephone interview of
18 Chambers. He stated that Steele requested his services and paid him \$350, that he simply
19 recorded the robocall, and that he provided the recording to Steele. Steele's attorney later

that the two other checks were to persons who provided Spanish translation services in connection with a Spanish-language version of the same robocall script.

⁵ Counsel also represented that Steele's \$700 expenditure for the robocalls was not included among an additional \$2,399 in in-kind contributions from Steele that the Committee had disclosed in reports filed with the Commission.

⁶ Steele did not remember how she sent the checks to the translator and interpreter and had no contact information for them. See E-mail from McDonough, Counsel to Steele (Feb. 19, 2014).

1 represented that Steele sent the recording to Long or one of his campaign workers by e-mail and
2 that she did not know how the recording became a robocall. *See* E-mail from Sean McDonough,
3 Counsel to Steele (Jan. 30, 2014).

4 Steele represented that Long or his campaign determined who would be called. She said
5 that she did not have a list of numbers, but that she understood that the calls would be made to
6 certain counties based on "who they were going after." She could not quantify how many
7 robocalls were placed except to say that they were not in the "millions." Following our
8 interview, we received an additional correspondence from her attorney confirming Steele's
9 representations that "Mr. Long asked her to participate in a robocall and help pay for them." *See*
10 Letter from Sean M. McDonough (Jan. 16, 2014).

11 After receiving notification of the alleged violations, Long submitted a one-page
12 Response in which he stated:

13 None of the allegations are true. I am aware that Women Advocating
14 Respect founded by Beth Steele ran a robocall regarding Grayson and his
15 record, antics etc. Ms. Steele and/or her organization Women Advocating
16 Respect paid for and produced the call. I didn't authorize the call as I don't
17 have any authority over Ms. Steele or Women Advocating Respect and I
18 did not pay for any of its costs.
19

20 Long Resp. at 1. Long also invited the Commission to call him if it wished to further inquire
21 about the matter. *Id.*

22 III. ANALYSIS

23 A. There Is Reason to Believe that the Respondents Engaged in a Coordinated 24 Communication in Connection with the Challenged Robocall

25 A payment for a "coordinated communication" is an in-kind contribution to the candidate
26 with whom it is coordinated and must be reported as an expenditure made by that candidate.

27 11 C.F.R. § 109.21(b). A coordinated communication is one that satisfies the three-pronged test

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1 set forth in 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than that
2 candidate or authorized committee; (2) the communication satisfies at least one of the content
3 standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of
4 the conduct standards set forth in 11 C.F.R. § 109.21(d).

5 The payment prong is satisfied here because Steele paid \$700 to produce the English and
6 Spanish language versions of the robocalls.⁷ In addition, Long claims that he did not pay any
7 costs associated with the robocalls.

8 The content prong is satisfied on two independent grounds. First, the robocall appears to
9 be a public communication⁸ that expressly advocates the election or defeat of a clearly identified
10 federal candidate. See 11 C.F.R. § 109.21(c)(3). The Commission previously concluded that the
11 WAR robocalls contain express advocacy because the calls exhort listeners to defeat or reject the
12 incumbent: "On November 6, send Alan Grayson home for good." *Id.* § 100.22(a). Second, the
13 robocalls also satisfy the content prong because they are a public communication that clearly
14 identifies a House candidate, Grayson, they were made 90 days or fewer before the candidate's
15 election, and there is reason to believe that they were publicly disseminated in the candidate's
16 jurisdiction. *Id.* § 109.21(c)(4)(i).

17 The evidence also reasonably suggests that the conduct standard may have been met.
18 The conduct prong is satisfied where the candidate requested or suggested the creation,
19 production, or distribution of the communication. See *id.* § 109.21(d)(1). The conduct prong is
20 also met where the candidate is materially involved in decisions regarding the content of the

⁷ This amount likely does not represent the total value of the expenditures in connection with the robocalls, as it does not include any costs for obtaining recipient telephone numbers or for transmitting the robocalls.

⁸ Public communications include phone bank communications, which are defined to include 500 or more identical telephone calls. 11 C.F.R. §§ 100.26, 100.28.

1 conducting an investigation."¹⁰ Given that reasonably credible information developed as a result
2 of the investigation into the cost of the independent expenditure suggests that Long or an agent
3 of his committee may have engaged in coordinated conduct with Steel, we therefore recommend
4 that the Commission find reason to believe that Long and the Long Congress coordinated the
5 robocall under 11 C.F.R. § 109.21, resulting in the Long Committee's knowing acceptance of a
6 prohibited in-kind contribution in violation of 52 U.S.C. § 30118(a). And because the Long
7 Committee did not report the in-kind contribution, we further recommend that the Commission
8 find reason to believe that Todd Long for Congress and Todd Long in his official capacity as
9 treasurer violated 52 U.S.C. § 30104(b).¹¹

10 Based on the information currently in our possession and the typical cost of robocalls, it
11 appears that the amount of any additional funds Long or his Committee may have spent to
12 produce and broadcast the robocall beyond Steele's initial \$700 payment may be modest.
13 Nonetheless, we recommend that the Commission find reason to believe and not dismiss the
14 Complaint. In concluding that this matter warrants further administrative action, we place
15 significant emphasis on the fact that the allegations in question assert that a candidate directly
16 engaged in the challenged independent expenditure, possibly with knowledge of the relevant

¹⁰ See *id.* (reason-to-believe finding appropriate where complaint "credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope").

¹¹ Steele's statements suggest that she made excessive in-kind contributions to Long, which he and the Committee in turn accepted. Steele and her counsel confirmed that the \$700 she allegedly spent on the robocalls was unrelated to an additional \$2,399.05 in in-kind contributions that the Committee reported in connection with the 2012 general election. Because we intend to conduct an investigation upon a finding of reason to believe that the Respondents coordinated the advertisement, which may further develop the record on this issue, we recommend that the Commission take no action at this time concerning a potential violation of 52 U.S.C. § 30116.

1 legal prohibition that conduct violated.¹² We therefore recommend proceeding with an
2 investigation as described at greater length below.

3 **B. There Is Reason to Believe that the Long Committee Violated the Disclaimer**
4 **Provisions of the Act**

5 If a communication is authorized and paid for by a candidate, a candidate's authorized
6 committee, or an agent of either, it must clearly state that the communication has been paid for
7 by the authorized political committee. 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1). If a
8 communication is authorized by the candidate but paid for by another person, the disclaimer
9 must state that the communication is paid for by such other person and is authorized by the
10 candidate, his committee, or their agents. 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).
11 Communications not authorized by a candidate, his committee, or their agents, must include a
12 disclaimer that identifies, among other things, the person who paid for the communication and
13 state that it is not authorized by any candidate or candidate's committee. 52 U.S.C.
14 § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

15 The robocalls stated that WAR paid for them. There is no statement indicating whether
16 they were authorized by a candidate or candidate's committee. Steele's statements that Long
17 asked her to make the robocalls, provided her with a script, directed her to pay vendors, received
18 the recording from her, and then apparently arranged for the robocalls to be transmitted to
19 specific persons or places, if true, suggest that the robocalls should have stated that Long
20 authorized them. See 11 C.F.R. § 110.11(b). Long's assertion that he "didn't authorize the call"
21 because he did not "have any authority over Ms. Steele or Women Advocating Respect" is not to

¹² The allegations here, if true, raise the possibility that Long or the Committee may have intentionally disregarded a known legal obligation. For instance, the 2012 campaign was Long's third federal campaign, and the robocall script — which Steele asserts Long provided — included a partial disclaimer, suggesting familiarity with disclosure obligations. The possibility of purposeful evasion therefore recommends that the Commission should seek to answer a few discrete factual questions before resolving the matter, despite the modest amount in violation.

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1 the contrary. The issue is not Long's authority over the actions of WAR or Steele, but rather
2 whether he in fact gave his permission or approval in advance. At this stage, Steele's specific
3 statement that he did supports a reason to believe finding.

4 The information Steele provided also suggests that the disclaimer's assertion that WAR
5 paid for the robocalls was inaccurate. Although Steele used WAR checks to pay for her voice to
6 be recorded and for a translator and narrator to create a Spanish version of the robocalls, we have
7 not identified who paid for access to the list of telephone numbers that received robocalls or for
8 their transmission. Accepting the truth of Steele's description of Long's substantial involvement
9 in the advertisement, then Long, the Committee, or another person in coordination with Long or
10 the Committee likely covered those additional expenses and should have been identified in the
11 disclaimer as a party who paid for the robocalls. Consequently, we recommend that the
12 Commission find that there is reason to believe that Todd Long for Congress and Todd Long in
13 his official capacity as treasurer violated 52 U.S.C. § 30120(a)(1)-(3).

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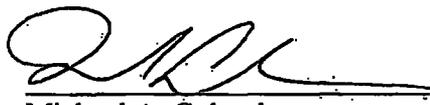
V. RECOMMENDATIONS

- (1) Find reason to believe that Todd Long, Todd Long for Congress and Todd Long in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 30120(a)(1)-(3);
- (2) Approve the attached factual and legal analysis;
- (3) Approve compulsory process, as necessary; and
- (4) Approve the appropriate letters.

Date: 6/10/15


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